

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LODI UNIFIED SCHOOL DISTRICT AND  
CALIFORNIA DEPARTMENT OF  
EDUCATION.

OAH CASE NO. 2014100012

ORDER GRANTING CDE'S MOTION  
TO BE DISMISSED AS A PARTY

On September 26, 2014, Student filed with the Office of Administrative Hearings a due process hearing request (complaint) naming Lodi Unified School District and California Department of Education as respondents.

On October 7, 2014, CDE filed a motion to dismiss on the grounds that it is not a proper or necessary party to the action.

On October 10, 2014, Student filed an opposition to the motion. On October 14, 2014, CDE filed a reply.

APPLICABLE LAW

Special education due process hearing procedures extends to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.) The Code of Federal Regulations provides that the term “public agency” encompasses state educational agencies (SEAs) such as CDE, as well as local educational agencies (LEAs) such as District, “and any other political subdivisions of the State that are responsible for providing education to children with disabilities.” (34 C.F.R. § 300.33 (2006)<sup>1</sup>.) If CDE is a “public agency” as defined in the IDEA, to be a proper party for a due process hearing CDE must also be involved in making decisions regarding Student.

Determination of whether CDE is a “public agency involved in any decisions regarding” Student requires a review of California statutes that define the role of CDE with

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<sup>1</sup> All references are to the 2006 Code of Federal Regulations.

regard to assessment of students. CDE operates special Diagnostic Centers to provide services, including pupil assessment, consultation, technical assistance, and training to school districts, county offices of education, and special education local plan areas. (Ed. Code, §§ 59201.) Students who have already been assessed may be referred to the state Diagnostic Centers for further assessment and recommendations, "as appropriate," indicating that inappropriate referrals should not be made, and need not be accepted. (See Ed. Code, § 56326.) The referral must be made by the student's LEA, state the reasons for the referral, and include the results of local assessments. (Cal. Code Regs., tit 5, § 3025, subd. (a).) Such a referral for further assessment by the Diagnostic Centers does not constitute placement of the student in one of the special schools operated by CDE to educate deaf and blind students, who, because of their severe loss of hearing or vision, cannot be provided an appropriate educational program and related services in the regular public schools (Ed. Code, §§ 59001 & 59101), demonstrating that CDE is not an LEA for purposes of providing a free appropriate public education until a student is actually attending one of those schools. (Ed. Code, § 56367, subd. (b).)

## DISCUSSION

Student's complaint alleges that he was referred by District to one of CDE's Diagnostic Centers, but CDE took over six months to complete the assessment and did not attend the individualized education program team meeting at which the assessments results were reviewed, resulting in a denial of FAPE to Student.

CDE contends that it is not a proper party to this action, as it is not an educational agency with a duty to provide Student with a FAPE. CDE argues that assessments are not "services" provided to a student within the meaning of the IDEA, and that completing an assessment at the request of District does not constitute involvement in decisions regarding Student.

Student asserts that CDE is a necessary party because District might contend that it is not responsible for the delay in providing Student with a FAPE pending the assessment results from the Diagnostic Center, and Student will need to seek complete relief from CDE for the denial of FAPE caused by the assessment delay.

CDE replies that the Diagnostic Centers' assessments do not confer on it authority or responsibility for educational decisions for individual students, and no CDE Student's IEPs or participated in educational decisions regarding Student.

As set forth above, Education Code sections 59201 and 56367, subdivision (d), do not impose a duty upon CDE to be individually responsible to provide a FAPE, or make education decisions about Student. Student's argument that the allegations of the complaint that CDE performed an assessment of Student upon referral from District demonstrate that CDE participated in District's educational decisions constitutes an unsupported and unreasonable extension of CDE's statutory role in supervising the state Diagnostic Centers.

Student's anticipation that District will blame any delays in providing a FAPE on CDE, who has no obligation to provide a FAPE, is speculative and an insufficient basis for including CDE as a respondent.

In sum, because under the facts alleged CDE was not a public agency involved in any decisions regarding Student, CDE is not a proper respondent. Therefore CDE is dismissed as a party to the complaint.

IT IS SO ORDERED.

DATE: October 20, 2014

/s/

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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings